



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0403]

RIN 1625- AA08

Special Local Regulations; Annual Bayview Mackinac Race

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent Special Local Regulations to provide for the safe control of vessel movement during the start of the Annual Bayview Mackinac Race, commonly known as the Port Huron to Mackinac Sail Race. This action is necessary to provide for the safety of the general boating public and commercial shipping during the start of the race.

DATES: This rule is effective July 21, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble, are part of docket [USCG-2012-0403]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box, and click "Search." You may visit the Docket

Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via e-mail at:

frank.t.jennings@uscg.mil or by phone at: (216) 902-6094.

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

| | |
|------|---------------------------------|
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

A. Regulatory History and Information

On May 15, 2012, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Annual Bayview Mackinac Race in the Federal Register (77 FR 28538). We received 0 comments on the proposed rule. No public meeting was requested, and none was held.

The Coast Guard recognizes that this final rule may be effective less than 30 days after publication in the

Federal Register. Under 5 U.S.C. 553(d)(3), an agency may issue a rule less than 30 days before its effective date when the agency finds good cause to do so. For this rule, the Coast Guard finds that good cause exists for publishing this final rule less than 30 days before its effective date. Delaying the effective date of this final rule would prevent its enforcement on the scheduled day of the 2012 race and thus, would preclude the Coast Guard from protecting spectators and vessels from the associated hazards, which are discussed herein. The goal of delaying the effective date is to allowing the public time to prepare to comply with the new rule. In this case, that goal is supported by the NPRM published in rule has been met by the NPRM published in May of this year. In addition, this race is a local institution and has been run every year since 1925. The Coast Guard does not expect any member of the public to be unable to comply with the rule because they did not have sufficient time to prepare.

B. Basis and Purpose

The Port Huron to Mackinac sail race (currently titled the "Bell's Beer Bayview Mackinac Race") is an annual regatta that has taken place since 1925. The race occurs in July of each year with a starting point in Port Huron, MI. It is typical for more than 200 sailboats to take part

in this annual event. The Coast Guard's Ninth District Commander has determined that the high concentration of participants and spectators at the race's starting point poses extra and unusual hazards to the boating public. The likely combination of recreational vessels and sailing vessels gathered together in high concentrations within a congested area known to have fast currents could lead to serious boating injuries or fatalities.

C. Discussion of Rule

In light of the extra and unusual hazards likely to occur at the starting point of the Port Huron to Mackinac sail race, the Coast Guard is establishing permanent Special Local Regulations. These Special Local Regulations will be enforced in July of each year, and the exact times and dates of enforcement will be published in the Federal Register annually via a Notice of Enforcement.

This Special Local Regulation will apply in the starting area of the race in the vicinity of Port Huron, MI. Specifically, this regulated area will include all U.S. navigable waters of the Black River, St. Clair River and lower Lake Huron starting at: latitude 042°58'47" N, longitude 082°26'0" W; then easterly to latitude 042°58'24" N, longitude 082°24'47" W; then northward along the International Boundary to latitude 043°2'48" N, longitude

082°23'47" W; then westerly to the shoreline at approximate location latitude 043°2'48" N, longitude 082°26'48" W; then southward along the U.S. shoreline to latitude 042°58'54" N, longitude 082°26'1" W; then back to the beginning [DATUM: NAD 83].

In order to ensure the safety of spectators and those vessels participating in the race, the Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so but only with prior approval of the PATCOM and only when so directed by that individual. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels allowed within the regulated area will be operated at a no wake speed and in a manner that will not endanger participants in the event or any other craft. These Special Local Regulations shall not apply to vessels participating in the event or government vessels patrolling the regulated area.

In the event these Special Local Regulations affect shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign "Coast Guard Patrol Commander" on Channel 16 (156.8 MHZ).

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

This Special Local Regulation will be enforced for only seven hours on a single day in July of each year.

Also, the regulated area will be a relatively small and only in effect at the race's starting point. It is expected that during the annual enforcement of this Special Local Regulation the majority of vessel traffic in the vicinity of the regulated area will be recreational in nature. Furthermore, some vessel traffic will be allowed to pass, albeit with caution and at a reduced speed, through the regulated area with the permission of the Coast Guard Patrol Commander. Finally, the Coast Guard expects that public awareness of this event, along with the Coast Guard's regulation of it, is particularly high. As mentioned above, this race has recurred regularly since 1925, and the Coast Guard has regulated it for many years with both permanent and temporary regulations. Despite the race's long history, the Coast Guard still intends to issue maritime advisories to current users of the affected waterways. On the whole, local maritime interests are already well familiar with the effects of this event and this Special Local Regulation.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C.

605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Black River, St. Clair River, and lower Lake Huron during the month of July each year. This Special Local Regulations will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in above Regulatory Planning and Review section.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant

effect on the human environment. This rule involves the establishment of Special Local Regulations and is therefore categorically excluded under figure 2-1, paragraph (34)(h), of the Instruction. During the annual permitting process for this event an environmental analysis will be conducted to include the effects of these proposed Special Local Regulations. Thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this proposed rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100 - SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.902 to read as follows:

§ 100.902 Special Local Regulations; Annual Bayview Mackinac Race.

(a) Regulated area. These Special Local Regulations apply to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042°58'47" N, longitude 082°26'0" W; then easterly to latitude 042°58'24" N, longitude 082°24'47" W; then northward along the International Boundary to latitude 043°2'48" N, longitude 082°23'47" W; then westerly to the shoreline at approximate location latitude 043°2'48" N, longitude 082°26'48" W; then southward along the U.S. shoreline to latitude 042°58'54" N, longitude 082°26'1" W; then back to the beginning [DATUM: NAD 83].

(b) Enforcement period. These Special Local Regulations will be enforced annually at the commencement of the Bayview Mackinac Race. The enforcement period will last approximately seven hours on a single day each July. The Coast Guard will notify the public of the exact enforcement date and times via a Notice of Enforcement published in the Federal Register. Also, the Coast Guard may use marine broadcasts, local notice to mariners, local news media, on-scene oral notice, and broadcasts on VHF-FM marine radio Channel 16 (156.8 MHZ) to notify the public of the exact dates and times of enforcement.

(c) Special local regulations. (1) No vessel may enter the regulated area established in paragraph (a) of

this section without prior approval from the Coast Guard's designated Patrol Commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(2) Vessels permitted to enter this regulated area must operate at a no wake speed and in a manner that will not endanger race participants or any other craft.

(3) The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, a Notice of Violation for failure to comply, or both.

(4) If it is deemed necessary for the protection of life and property, the PATCOM may terminate at any time the marine event or the operation of any vessel within the regulated area.

(5) In accordance with the general regulations in § 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast

Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander."

(6) The rules in this section shall not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

DATED: June 15, 2012

M.N. Parks

Rear Admiral, U.S. Coast Guard

Commander, Ninth Coast Guard District

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